

Constitution

of

McKenzie Institute Australia Limited

A Company Limited by Guarantee not having Share Capital

Unit 2, 25 – 41 Redwood Drive

Dingley, VIC 3172

ACN: 625 935 506

| | |
|--|--|
| | |
|--|--|

Overview

This is the Constitution of McKenzie Institute Australia Limited (**Company**).

The Company is a licensed branch of McKenzie Institute International.

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

The liability of its members is limited to the amount they have agreed to pay in the guarantee. The Company must always have at least one member and three directors.

The Constitution sets out the basis on which the Company is to be managed. Nothing in the Constitution is intended to derogate from the *Corporations Act*. That Act:

- imposes many obligations on the Company which are not reproduced in this Constitution; and
- overrules anything in this Constitution to the extent that they are inconsistent.

This Constitution replaces the replaceable rules in the *Corporations Act*. Words used in the Constitution which have a meaning in the *Corporations Act* have the same meaning in this Constitution (unless expressly stated otherwise).

Table of contents

| | | |
|-----------------|---|----------|
| <u>A</u> | <u>Company's name, Objects and powers</u> | 1 |
| | <u>Name of the Company</u> | 1 |
| | <u>Objects</u> | 1 |
| | <u>Gift fund</u> | 1 |
| | <u>Powers</u> | 2 |
| <u>B</u> | <u>Members' liability and guarantee</u> | 2 |
| | <u>Liability of Members</u> | 2 |
| | <u>Guarantee by Members</u> | 2 |
| <u>C</u> | <u>How the Company's income and property are to be applied</u> | 2 |
| | <u>For the Company's objects</u> | 2 |
| | <u>No dividends etc. to Members</u> | 3 |
| | <u>Remuneration and expenses for Members allowed</u> | 3 |
| | <u>Payments to directors: restrictions, remuneration, expenses</u> | 3 |
| | <u>Payments to related parties</u> | 3 |
| <u>D</u> | <u>Fees imposed by the Company</u> | 4 |
| | <u>Setting fees</u> | 4 |
| <u>E</u> | <u>Membership</u> | 4 |
| | <u>Members</u> | 4 |
| | <u>Register of Members</u> | 4 |
| | <u>Eligibility for membership</u> | 4 |
| | <u>Types of membership</u> | 5 |
| | <u>Membership is not transferable</u> | 5 |
| | <u>Voting rights</u> | 5 |
| | <u>Applying and being admitted to Membership</u> | 5 |
| | <u>Resigning from Membership: and ongoing liability</u> | 6 |
| | <u>Expelling and disciplining a Member</u> | 6 |
| | <u>Removing an expelled Member's name from the Register</u> | 7 |
| <u>F</u> | <u>General Meetings: frequency and notice</u> | 7 |
| | <u>Annual General Meeting required</u> | 7 |
| | <u>Convening Extraordinary Meetings</u> | 7 |
| | <u>Notice of General Meetings</u> | 8 |
| | <u>Changing the notice procedure for General Meetings</u> | 8 |
| | <u>Failure to receive Notice</u> | 8 |
| <u>G</u> | <u>General Meetings: proceedings</u> | 8 |
| | <u>Use of technology in conferencing</u> | 8 |
| | <u>Business at the meeting</u> | 9 |
| | <u>Quorum required</u> | 9 |
| | <u>If no Quorum present</u> | 9 |
| | <u>Chair of the meeting</u> | 9 |
| | <u>Adjourning (and resuming) a meeting</u> | 10 |
| | <u>Auditor attending etc. meeting</u> | 10 |

| | | |
|-----------------|---|-----------|
| <u>H</u> | <u>General Meetings: voting</u> | 10 |
| | <u>Show of hands vote</u> | 10 |
| | <u>Evidence of resolution</u> | 10 |
| | <u>Poll vote</u> | 11 |
| | <u>Continuing with other business before a Poll</u> | 11 |
| <u>I</u> | <u>General Meetings: appointing a proxy</u> | 11 |
| | <u>Eligibility to be proxy</u> | 11 |
| | <u>Company receiving notice of proxy</u> | 11 |
| | <u>Form of proxy</u> | 12 |
| | <u>Proxy's voting instructions</u> | 12 |
| | <u>Proxy's authority</u> | 12 |
| <u>J</u> | <u>General Meeting: appointing an attorney</u> | 12 |
| | <u>Member appointing an attorney</u> | 12 |
| | <u>Directors appointing an attorney of the Company</u> | 12 |
| <u>K</u> | <u>General Meeting: voting by attorney or proxy</u> | 13 |
| | <u>Validity of vote after death or revocation</u> | 13 |
| | <u>Person who has appointed proxy or attorney may attend meetings</u> | 13 |
| <u>L</u> | <u>Directors</u> | 13 |
| | <u>Number and qualifications of Directors</u> | 13 |
| | <u>Length of appointment</u> | 13 |
| | <u>Election of Directors</u> | 13 |
| | <u>Officers on the Board</u> | 14 |
| | <u>Casual vacancies</u> | 14 |
| | <u>Disqualification of Directors</u> | 14 |
| | <u>First directors</u> | 14 |
| <u>M</u> | <u>Powers of the Board</u> | 15 |
| | <u>The board controls and directs the company</u> | 15 |
| | <u>Borrowing</u> | 15 |
| | <u>Investment</u> | 15 |
| | <u>Negotiable instruments</u> | 15 |
| <u>N</u> | <u>Proceedings of the Board</u> | 15 |
| | <u>General</u> | 15 |
| | <u>Use of technology in Board conferencing</u> | 15 |
| | <u>Notice of meeting</u> | 16 |
| | <u>Quorum</u> | 16 |
| | <u>Chair</u> | 16 |
| | <u>Voting</u> | 16 |
| | <u>Delegation by the Board</u> | 16 |
| | <u>Defects in appointment</u> | 17 |
| <u>O</u> | <u>Board minutes and circulated resolutions</u> | 17 |
| | <u>Making Board resolutions</u> | 17 |
| | <u>Minutes to be kept</u> | 17 |
| | <u>Circulated Resolution General</u> | 17 |

| | | |
|----------|--|-----------|
| | Evidence of proceedings and resolutions | 18 |
| P | Accounts | 18 |
| | Accounts to be kept | 18 |
| | Location and inspection of accounts | 18 |
| | Auditor | 18 |
| Q | Indemnity | 18 |
| | Definition of Liability and Officer | 18 |
| | Indemnity of Officers | 18 |
| | Indemnity for Proceedings | 19 |
| R | Notices | 19 |
| S | Distribution of property on winding-up | 19 |
| T | Dispute Resolution | 20 |
| U | Replaceable Rules displaced | 20 |
| V | Definitions and Interpretation | 20 |
| | Schedule 1 | 23 |
| | Names and usual residential addresses of initial directors | 23 |
| | Guarantee | 23 |

Constitution of McKenzie Institute Australia Limited

a. A Company's name, Objects and powers

Name of the Company

1. 1 The name of the Company is McKenzie Institute Australia Limited.

Objects

1. 2 The Company is a not for profit organisation established for the charitable purpose of advancing education and advancing health in the area of musculoskeletal disorders.
2. 3 The Company aims to achieve its objects by:
 3. 3.1 promoting the principles of management of musculoskeletal disorders developed by Robin McKenzie;
 4. 3.2 conducting the McKenzie Institute International education program, which consists of courses on Mechanical Diagnosis and Therapy;
 5. 3.3 promoting the McKenzie Institute International education program to health professionals, including but not limited to, doctors, physiotherapists, chiropractors, osteopaths and exercise physiologists;
 6. 3.4 promoting the principles of Mechanical Diagnosis and Therapy among health care professionals, researchers, academics and the general public;
 7. 3.5 providing educational tools and support for people who have completed

- the McKenzie Institute International education program;
8. 3.6 promoting the assessment, treatment, medication and empowerment of patients with musculoskeletal disorders;
 9. 3.7 seeking and coordinating public funding and government grants in furtherance of the above purposes; and
 10. 3.8 doing anything else incidental or conducive to the above matters.

Gift fund

1. 4 If the Company obtains deductible gift recipient status from the Australian Taxation Office, the Company may maintain, solely for the objects of the Company, a fund ('**Gift Fund**') into which gifts of money or property for the objects of the Company will be made and to which any money received by the Company because of such gifts is to be credited and the Gift Fund will not receive any other money or property.
2. 5 The Company will use gifts made to the Gift Fund and any money received because of such gifts solely for the objects of the Company.
3. 6 At the first occurrence of either the winding up of the Gift Fund, the winding up or cancellation of the incorporation of the Company, or the revocation of the Company's endorsement as a deductible gift recipient, the Company will transfer any surplus assets of the Gift Fund in accordance with clauses 133 to 135 of this Constitution.
4. 7 Any other provisions which, from time to time, are required in order to maintain the status of the Company as a company to which income tax deductible gifts can be made under the *Income Tax Assessment Act 1997* (Cth) are deemed to form part of this Constitution.

Powers

1. 8 The Company has:
 2. 8.1 the legal capacity and powers of an individual; and
 3. 8.2 all the powers of a body corporate (other than the power to issue shares).
4. 9 However, the Company has those capacities and powers only to the extent:
 5. 9.1 necessary, or convenient, to carry out the Company's objects; or
 6. 9.2 incidental to carrying out those objects.

Amending the Constitution

1. 10 The Members may amend this Constitution by passing a Special Resolution.
2. 11 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

a. B Members' liability and guarantee

Liability of Members

1. 12 The liability of each Member is limited to the amount of the guarantee set in clause 13.

Guarantee by Members

1. 13 If the Company is wound up while a person is a Member (or within one year after they stop being a Member) then that person must contribute up to \$10 to the Company for:
 2. 13.1 payment of the Company's debts and liabilities incurred before that person ceased to be a Member;
 3. 13.2 payment of the costs, charges and expenses of winding-up the Company; and
 4. 13.3 adjustment of the rights of the contributories among themselves.

a. C How the Company's income and property are to be applied

For the Company's objects

1. 14 All of the Company's income and property must be applied solely towards the promotion of the Company's objects as set out in clause 2 and 3.

No dividends etc. to Members

1. 15 The Company may not pay, or transfer, any of its income or property — directly or indirectly — by way of dividend, bonus or otherwise to any person who is or has been a Member.

Remuneration and expenses for Members allowed

1. 16 Regardless of clause 15, the Company may pay remuneration in good faith to any Member, officer or employee of the Company in return for any good or services they provide to the Company in the ordinary and usual course of business.
2. 17 The Board may authorise the repayment of any expenses a Member incurs for the Company, or in connection with performing their duties for the Company.

Payments to directors: restrictions, remuneration, expenses

1. 18 If the Company is to pay any remuneration to a Director for services rendered in the capacity as a Director, then the remuneration must be on reasonable commercial terms and the Board must first have:
 2. 18.1 consented to the Director providing those services; and
 3. 18.2 resolved to approve the amount of the payment.
4. 19 If the Company is to pay any remuneration to a Director for services rendered in the capacity as an employee, contractor or service provider of the Company, then the Board must first have resolved to approve the terms of the arrangement.

5. 20 The Board may authorise the repayment of any expenses a Director incurs for the Company, or in connection with performing their duties for the Company.

Payments to related parties

1. 21 If the Company is to pay any financial benefit to a Related Party for goods and services obtained for the Company's objects as set out in clause 2 and 3, then the financial benefit must receive Member's approval by resolution as set out in section 217 – 227 of the Act (unless the financial benefit falls within an exception as set out in section 201 – 216 of the Act).

Loans and leases from Members

1. 22 The Company may pay:
 2. 22.1 interest on money borrowed from any Member; and
 3. 22.2 reasonable and proper rent for premises a Member leases to the Company.
4. 23 For the purposes of clause 22, if a Member pays the Company a deposit, bond or other security for the payment of fees and charges levied under the Constitution, then that payment is not a loan from the Member.

a. D Fees imposed by the Company

Setting fees

1. 24 The Board may prescribe:
 2. 24.1 a cost payable by Members by way of Membership fees and any other fees the Board thinks fit; and
 3. 24.2 when and in what circumstances these fees are payable.
4. 25 The Board must give Members at least one month's notice of any increase in the fees, or of a change in the due date for fees payable under clause 24.

a. E Membership

Members

1. 26 The Company's Members are as follows (unless the Member has resigned under clause 41 or clause 42, or been expelled under clause 44):
 2. 26.1 the persons who are specified in the application to register the Company lodged under section 117 of the Act and who have consented to be Members; and
 3. 26.2 any other person the Board admits to Membership in accordance with this Constitution.

Register of Members

1. 27 The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.
2. 28 The Company must give current Members access to the register of Members.
3. 29 Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.
4. 30 Any dispute that arises in relation to the Register must be referred to the Board. The Board's decision is final and binding on all Members (in the absence of manifest error).

Eligibility for membership

1. 31 The Member must be a natural person. The following persons are eligible to be Members:
 2. 31.1 any person who has undertaken initial training, as prescribed by the Company, from time to time;
 3. 31.2 any person that the Board considers would benefit the Company by becoming a member; and
 4. 31.3 any person in a category of persons that the Company has determined to be eligible to be Members.
5. 32 The Board may approve an Application as set out in clause 38 even if the Application does not state the matters listed in clause 31. In that case, by applying to be a Member, the Applicant agrees to the matters listed in clause 31.

Types of membership

1. 33 At any time, the Board may (subject to the Act) create different types of membership with different rights, obligations and restrictions.

Membership is not transferable

1. 34 A Member may not transfer their Membership to another person.

Voting rights

1. 35 A Member is entitled to one vote at a General Meeting of the Company.
2. 36 However, the Board may suspend a member's entitlement to vote if the Member owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

Applying and being admitted to Membership

1. 37 A person's Application to be a Member must be made in the form, and accompanied by any fee, the Board has set.
2. 38 The Board will consider and, in its absolute discretion, accept or reject an

Application. If the Board rejects an Application, then:

3. 38.1 it must arrange for any money the Applicant tendered with the Application to be repaid to the Applicant, without interest; and
4. 38.2 the Board does not have to give any reasons for the rejection;

If the Board approves an Application, then the Board must as soon as possible:

1. 38.3 enter the new Member on the register of Members; and
 2. 38.4 write to the Applicant to tell them their Application was approved, and the date that their membership started.
3. 39 An Applicant does not become a Member until the Company has:
4. 39.1 received any fee that applies; and
 5. 39.2 the name and address of the Applicant are entered in the Register.
6. 40 Each Member is liable for all taxes, duty and charges payable in respect of their Application, their Membership and any related transaction or document. Each Member indemnifies the Company and will keep it indemnified in respect of any liability for all those amounts.

Resigning from Membership: and ongoing liability

1. 41 A Member may resign from Membership by giving written notice to the Company. When the notice period expires, the Member stops being a Member but:
 2. 41.1 they remain liable for any money they owe the Company; and
 3. 41.2 under clause 13, they remain liable for another 12 months.
4. 42 A Member also resigns if they owe the Company any amount that is more than 3 months overdue (the Board may change the length of that period). If a Member resigns under this clause, then the Board may reinstate their membership if they pay the outstanding amount.
5. 43 A Member immediately stops being a Member if they die, are expelled under clause 44 or if they resign under clause 41.

Expelling and disciplining a Member

1. 44 The Board may — in the way described in clause 41 — expel a Member or implement appropriate disciplinary action if the Member:
 2. 44.1 has committed a breach of any obligation or duty under this Constitution;
or
 3. 44.2 has engaged in conduct detrimental to the interests of the Company.
4. 45 For any expulsion or discipline to be valid:
 5. 45.1 at least 21 days before the Board meeting at which the resolution is considered, the Member must be given written notice of:

- the meeting;
 - the intended resolution; and
 - the particulars of the alleged act, omission or conduct complained of;
1. 45.2 at the meeting (and before the resolution is passed), the Member must be given the opportunity to explain themselves in writing or orally (or both if they request it);
 2. 45.3 if the Member does give an explanation, then the Board must take it into account;
 3. 45.4 the relevant resolution must be passed by 75% of the Directors present and voting;
 4. 45.5 the Board must arrange for the Member to be given written notice of any Board resolution on the matter, which may include:
 - a. (a) to take no further action;
 - b. (b) to warn the Member;
 - c. (c) to suspend the Member's rights for no more than 12 months; or
 - d. (d) expel the Member; and
 5. 45.6 if the Board resolves to expel the Member, then the Member ceases to be a Member when the Board serves them with the notice. Also the Member's name will be removed from the Register as set out in clause 47.
 6. 46 The Company will use its best endeavours to complete disciplinary procedures as soon as reasonably practical. The Company will have no liability for loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

Removing an expelled Member's name from the Register

1. 47 If a Member is expelled from the Company, then their name must be removed from the Register. The Company has no liability to the Member in respect of their removal from the Register.
2. 48 When a Member's name is removed from the Register, the Member no longer has:
 3. 48.1 any rights or privileges attaching to Membership; or
 4. 48.2 any rights which they had against the Company that arose out of their Membership.

a. F General Meetings: frequency and notice

Annual General Meeting required

1. 49 The Company must hold an Annual General Meeting:

2. 49.1 in every calendar year;
3. 49.2 within five months after the end of its Financial Year; and
4. 49.3 at the time and place the Board determines.

Convening Extraordinary Meetings

1. 50 An Extraordinary Meeting may be convened:
 2. 50.1 by the Board at such time and place as the Board thinks fit, (as long as it complies with the Act); and
 3. 50.2 by Members as allowed under the Act.

Notice of General Meetings

1. 51 The Board must give at least 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor (unless a change to that arrangement is made under clause 53). The notice must specify:
 2. 51.1 the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 3. 51.2 the general nature of the meeting's business;
 4. 51.3 the details of any Special Resolutions to be proposed at the meeting; and
 5. 51.4 that Members are entitled to appoint a proxy who must be a Member.

Changing the notice procedure for General Meetings

1. 52 A meeting may be convened in a way other than, and on shorter notice than, clause 51 requires as long as:
 2. 52.1 all the Members entitled to vote at the meeting consent to the change beforehand; and
 3. 52.2 the notice and the shorter notice period comply with the Act.

Failure to receive Notice

1. 53 A meeting and its proceedings and resolutions are valid even if any one or more of the following is the case:
 2. 53.1 the Company accidentally omitted to give notice of a meeting to any Member; or
 3. 53.2 any Member did not receive notice of the meeting.

a. G General Meetings: proceedings

Use of technology in conferencing

1. 54 The Chair may (with the approval of the meeting) confer with Members and others

by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Members held on the day and at the time the conference was held — even if the Members were not present together in one place at the time. This clause does not limit the discretion of the Members to regulate their meetings.

2. 55 The provisions of this Constitution regulating the proceedings of the Members apply so far as they are capable to such conferences.

Business at the meeting

1. 56 The ordinary business of an Annual General Meeting may include:
 2. 56.1 considering any annual financial report, directors' report and Auditor's report;
 3. 56.2 reviewing the Company's activities;
 4. 56.3 electing and appointing Directors; and
 5. 56.4 appointing the Auditors and fixing the Auditor's remuneration (if the Company is required to have an auditor).
6. 57 All other business at an Annual General Meeting, and all business at an Extraordinary Meeting, is regarded as special business.

Quorum required

1. 58 For any business to be transacted at any General Meeting — except the adjournment of the meeting — a quorum must be present. The quorum for a General Meeting is 2 Members, present in person or by proxy or attorney.

If no Quorum present

1. 59 If a quorum is not present within half an hour after the time appointed for a General Meeting then:
 2. 59.1 if the meeting was convened on the requisition of Members, then it will be dissolved; or
 3. 59.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place (or at such other place as the Chair decides). If at that adjourned meeting a quorum is not present within fifteen minutes after the time appointed for holding the meeting, then the Members present are a valid quorum.

Chair of the meeting

1. 60 The Chair or in the Chair's absence, the Deputy Chair is to preside as chair at every General Meeting.
2. 61 If at any General Meeting neither the Chair nor the Deputy Chair is present within

fifteen minutes after the time appointed for holding the meeting (or if neither is willing to preside), then the Members present are to choose a Director to preside. If no Director is present (or if all Directors present decline to preside), then those persons present will choose a Member who is present to preside as Chair.

3. 62 The Chair is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions.

Adjourning (and resuming) a meeting

1. 63 The Chair of a General Meeting:
 2. 63.1 may, with the consent of the Members present and entitled to vote at any meeting, and at which a quorum is present, adjourn a meeting; and
 3. 63.2 must adjourn a meeting if the meeting directs them to do so.
4. 64 If the Chair adjourns a General Meeting, then they may do so to another time or place (or both).
5. 65 If a General Meeting is adjourned for one month or more, then the Company must arrange for a new notice of the adjourned meeting to be given.
6. 66 After an adjourned meeting is resumed, the only business that may be transacted at the meeting is business that was unfinished before the adjournment.

Auditor attending etc. meeting

1. 67 The Auditor is entitled:
 2. 67.1 to attend any General Meeting of the Company;
 3. 67.2 to receive the same notices of, and other communications relating to, any General Meeting that a Member is entitled to receive; and
 4. 67.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity. The Auditor's right to be heard exists even if the Auditor retires at that meeting or if a resolution to remove the Auditor from office is passed at that meeting.

a. H General Meetings: voting

Show of hands vote

1. 68 Every item of business submitted to a General Meeting is to be decided in the first instance by a show of hands of the Members who are personally present and entitled to vote. The Chair will not have a casting vote.

Evidence of resolution

1. 69 It is conclusive evidence that a resolution has been passed (regardless of whether there is any proof of the number or proportion of the votes recorded in favour of or against

the resolution) if:

2. 69.1 the Chair declares that a resolution has been passed or lost (having regard to the majority required); and
3. 69.2 an entry to that effect has been made in the Company's books and signed by the Chair of that, or the next meeting.

Poll vote

1. 70 The Chair or any Member present (personally or by proxy or attorney) may demand a poll before, or on the declaration of the result of, a show of hands. Any person who has demanded a poll may withdraw their demand.
2. 71 A poll demanded on any question of adjournment must be taken before any adjournment.
3. 72 The poll is to be taken:
 4. 72.1 in the manner and at the time and place as the Chair of the meeting directs; and
 5. 72.2 either at once or after an interval or adjournment or otherwise.
6. 73 The result of the poll is to be the resolution of the meeting at which the poll was demanded.
7. 74 If there is a dispute as to the admission or rejection of a vote, then the Chair will finally determine that dispute.
8. 75 At a poll, the Chair will not have a casting vote.

Continuing with other business before a Poll

1. 76 After a poll has been demanded, the meeting may continue with any business other than the issue on which poll has been demanded.

a. I General Meetings: appointing a proxy

Eligibility to be proxy

1. 77 Any Member may:
 2. 77.1 appoint a natural person who is a Member as a proxy to vote on the Member's behalf; and
 3. 77.2 may direct the proxy to vote either for or against each or any resolution.

Company receiving notice of proxy

1. 78 For an appointment of a proxy to be valid, the Company must receive the document appointing the proxy (and an original, or certified copy, of the power of attorney, if any, under which it is signed):

2. 78.1 at least 48 hours before the time for holding the relevant meeting or adjourned meeting or poll; and
3. 78.2 at one of:
 - the Registered Office;
 - a fax number at the Registered Office; or
 - a place, fax number or electronic address specified for such purpose in the notice of meeting.
1. 79 An instrument appointing a proxy is valid for any adjournment of the meeting to which it relates — unless it states something to the contrary.

Form of proxy

1. 80 An instrument appointing a proxy must be signed by the appointor, or his or her attorney, and must contain the following information:
 2. 80.1 the Company name;
 3. 80.2 the Member's name and address;
 4. 80.3 the Member's type of Membership;
 5. 80.4 the proxy's name or the name of the office held by the proxy; and
 6. 80.5 the meetings at which the appointment may be used.

Proxy's voting instructions

1. 81 A document appointing a proxy may specify the way in which the proxy is to vote for a particular resolution. If it does so, then the proxy must vote on the resolution as specified.

Proxy's authority

1. 82 A document appointing a proxy will be treated as giving the proxy:
 2. 82.1 authority to demand, or join in demanding, a poll; and
 3. 82.2 the power to act generally at the meeting for the person giving the proxy (except to the extent to which the proxy is specifically directed to vote for or against any proposal).

a. J General Meeting: appointing an attorney

Member appointing an attorney

1. 83 Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all, or certain specified, meetings of the Company. If the attorney wishes to appoint a proxy for the Member granting the power of attorney, then the attorney must at the Registered Office (or any other place the Board determines) produce:

2. 83.1 the power of attorney for inspection; and
3. 83.2 any evidence the Board requires that it has been properly executed.

Directors appointing an attorney of the Company

1. 84 The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. The appointment:
 2. 84.1 may be for any purposes and with powers, authorities and discretions (not exceeding those vested in, or exercisable by, the Directors under this Constitution);
 3. 84.2 may authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them;
 4. 84.3 may be for periods and on conditions as the Directors think fit; and
 5. 84.4 may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit.

a. K General Meeting: voting by attorney or proxy

Validity of vote after death or revocation

1. 85 If a person who has appointed a proxy or attorney has either died or revoked the appointment but any notice in writing of the death or revocation has not been received at the Registered Office before the meeting, then a vote given in accordance within the terms of appointment will be valid.

Person who has appointed proxy or attorney may attend meetings

1. 86 A person who has appointed a proxy or attorney may attend and take part in a meeting. Doing so does not revoke the appointment — unless the person votes on the resolution to which the appointment applies.

a. L Directors

Number and qualifications of Directors

1. 87 The number of Directors comprising the Board will be at least 3 and no more than 7, elected by the Members in accordance with this Constitution — except as provided in clauses 89, 90.3 and 92.

Length of appointment

1. 88 Each elected Director will hold office:
 2. 88.1 from the end of the Annual General Meeting at which they were elected;
 3. 88.2 until the end of the following Annual General Meeting — at that time, they

must retire (but they are eligible for re-election).

Election of Directors

1. 89 Apart from the first Directors, the Members may elect a Director by a resolution passed in a General Meeting.
2. 90 Directors will be elected in the following way:
 3. 90.1 A Member may nominate any individual to serve as a Director.
 4. 90.2 The nomination of any individual as a candidate for election as a Director must be:
 - in writing and signed by the nominated person; and
 - lodged with the Secretary at least 30 days before the Annual General Meeting at which the election is to take place (or any other scheduled General Meeting).
 1. 90.3 If the number of nominated candidates is not enough to meet the required minimum number of Directors, then the Board must appoint an individual as Director (as long as they consent) until there is at least the minimum number of Directors.

Officers on the Board

1. 91 At the first meeting of the Board after the Annual General Meeting, the Directors will elect from among their number a Chair, a Deputy Chair, a Secretary and a Treasurer (one Director may fill more than one position). Each of them will hold office until the end of the next Annual General Meeting.

Casual vacancies

1. 92 If there is a casual vacancy in the office of Director, then the Board may appoint a replacement Director. That replacement Director holds office until the end of the next Annual General Meeting.

Disqualification of Directors

1. 93 The office of a Director will be vacated if the Director:
 2. 93.1 becomes bankrupt or makes any arrangement or composition with their creditors;
 3. 93.2 resigns or is expelled as a Member, that Member resigns or is expelled as a Member;
 4. 93.3 becomes of unsound mind;
 5. 93.4 is absent for three consecutive Board Meetings without leave of the Board (unless the Board resolves to the contrary);
 6. 93.5 resigns from their Directorship by giving written notice to the Company; or

7. 93.6 ceases to hold office by reason of any order made under the Act.

First directors

1. 94 The first Directors are the persons set out as Directors in the application to register the Company lodged under section 117 of the Act. The first Directors will hold office until the end of the first Annual General Meeting, at which point they will cease being directors but will be eligible for re-election.

Duties of Directors

1. 95 The Directors must comply with their duties as Directors under legislation, and with the duties described in governance standard five of the regulations made under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
2. 96 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a General Meeting or in a Board meeting.

a. M Powers of the Board

The board controls and directs the company

1. 97 The control and direction of the Company to achieve the purposes set out in clause 2 and 3, and the management of its property and affairs are vested in the Board.
2. 98 The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

Borrowing

1. 99 The Board may raise money in any manner it thinks fit including by borrowing money (whether on the security of the Company's assets or not) and the issuing of a security for any other purpose — so long as this is done to further the Company's objects set out in clause 2.

Investment

1. 100 The Board may invest the Company's money in any manner, and for any period, so long as this is done to further the Company's objects set out in clause 2.

Negotiable instruments

1. 101 Two Directors, or one Director and some other officer authorised by the Board for the purpose, may sign, draw, accept, endorse or otherwise execute (as the case may be) the following documents for and on behalf of the Company: all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company.

a. N Proceedings of the Board

General

1. 102 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
2. 103 The Board must meet at least 2 times a year.

Use of technology in Board conferencing

1. 104 The Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. Any resolution passed using such a system is to be treated as having been passed at a meeting of the Board held on the day and at the time the conference was held — even if the Directors were not present together in one place at the time. This clause does not limit the discretion of the Board to regulate its meetings.
2. 105 The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

Notice of meeting

1. 106 At any time, the Board may convene a Board meeting by notice served on each Director. The Secretary is to arrange that notice at the request of the Chair or Deputy Chair.
2. 107 The proceedings of a Board meeting are valid even if:
 3. 107.1 the Company accidentally omitted to give notice of a meeting to any Director; or
 4. 107.2 any Director did not receive notice of the meeting.

Quorum

1. 108 A quorum for Board meetings is (unless the Board determines otherwise) if the number of Directors:
 2. 108.1 is an even number, half of the Board plus one other Director; or
 3. 108.2 is an odd number, the odd number nearest to, and greater than, half of the number of Directors.

Chair

1. 109 The Chair, or in the Chair's absence the Deputy Chair, is to chair every Board meeting.
2. 110 If at a Board meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding that meeting (or if neither is willing to chair), then the Directors present will choose one of their number to chair the meeting.

Voting

1. 111 Questions arising at any meeting will be decided by a majority of votes. Each Director present is entitled to one vote. The Chair does not have a casting vote.

2. 112 However, the Board may suspend a Director's entitlement to vote if the Director owes the Company any amount that is more than 3 months overdue (or such other period as the Board determines).

Delegation by the Board

1. 113 Subject to clause 114, the Board may, as it thinks fit, delegate any of its powers to individual Directors or Members or to committees. A committee may consist of the Directors or Members (or both) that the Board thinks fit. Any individual or committee must comply with any Board direction about how to execute the delegated powers.
2. 114 The Board may not delegate its power to delegate.
3. 115 The meetings and proceedings of any committee will be governed by the provisions of this Constitution that regulate the meetings and proceedings of the Board so far as they apply and so far as the Board has not replaced them.

Defects in appointment

1. 116 An act done in good faith by any meeting of the Board, any meeting of any committee formed by the Board or by any person acting as a Director will not be invalidated merely because of:
 2. 116.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
 3. 116.2 the disqualification of any of them.

a. O Board minutes and circulated resolutions

Making Board resolutions

1. 117 The Board may make resolutions either:
 2. 117.1 in a meeting, of which minutes must be kept as set out in clause 118; or
 3. 117.2 by circulated resolution which must be made and kept as set out in clause 119.
4. 118 The Board cannot make a resolution by circulated resolution where the Act or this Constitution requires a meeting to be held.

Minutes to be kept

1. 119 The Board must arrange for:
 2. 119.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
 3. 119.2 the minutes to be entered in books kept for that purpose; and
 4. 119.3 the minutes to be signed by the Chair of the meeting or by the Chair of the next meeting.

Circulated Resolution General

1. 120 If all the Directors have signed a document containing a statement that they are in favour of a resolution set out in the document, then that resolution is to be treated as having been passed as a Circulated Resolution at a meeting of the Board held at the time and date on which the resolution was last signed by a Director. (However, the reference to “all the Directors” in this clause does not include any Director who is not entitled to vote on the Resolution.)
2. 121 Any Circulated Resolution may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Company.

Evidence of proceedings and resolutions

1. 122 A minute or Circulated Resolution that is recorded and signed in accordance with clause 119 or 120 to 121 (as the case may be) is evidence of the proceeding or resolution to which it relates (unless the contrary is proved).

a. P Accounts

Accounts to be kept

1. 123 The Board must arrange for the Company to keep proper books of account that:
 2. 123.1 record true and complete accounts of the affairs and transactions of the Company; and
 3. 123.2 give a true and fair view of the state of the Company’s affairs and explain its transactions.

Location and inspection of accounts

1. 124 The Board must arrange for the books of account:
 2. 124.1 to be kept at the Registered Office, or in a place or places it thinks fit; and
 3. 124.2 to be open to the inspection of the Directors during usual business hours.

Auditor

1. 125 The Company will comply with the Act in relation to the appointment, removal and resignation of an Auditor.

a. Q Indemnity

Definition of Liability and Officer

1. 126 In clauses 127 to 130:
 2. 126.1 **Liability** means costs, losses, liabilities and expenses.

3. 126.2 **Officer** means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

Indemnity of Officers

1. 127 The Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that Officer in their capacity as an Officer by reason of any act or thing done or omitted to be done by that person:
 2. 127.1 in that capacity; or
 3. 127.2 in any way in the discharge of that person's duties; or
 4. 127.3 by reason of or relating to the person's status as an Officer.
5. 128 However, the indemnity in clause 127 does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

Indemnity for Proceedings

1. 129 Without limiting clause 127, the Company must indemnify every Officer out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer.
2. 130 However, the indemnity in clause 127 does not extend to any Liability from, or against, which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

a. R Notices

1. 131 The Company may serve notice on any Member in the ways shown in the left hand column of the table below. A notice will be taken to be served at the time shown in the right-hand column of that table on the relevant row.

| Way of serving notice | Timing of notice taken to be |
|---|--|
| Personally | When served |
| By sending it through the ordinary post to the Member's Registered Address | 3 days after the day it is posted. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle. |
| By leaving it at their Registered Address in an envelope addressed to the Member. | Business Day: The same day it is left at the Registered Address. Non-Business Day: the Business Day after it is left at the Registered Address. |
| By sending it to the fax number or electronic address (if any) nominated by the Member. | On the Business Day after it is sent. |

1. 132 A certificate in writing signed by the Secretary or any officer of the Company that the envelope containing the notice was properly stamped, addressed and posted or delivered will be conclusive evidence of the service of such notice.

a. S Distribution of property on winding-up

1. 133 If on the winding-up or dissolution of the Company, or if the Company's endorsement as a deductible gift recipient is revoked (whichever occurs first), after all its debts and liabilities have been satisfied there remains any property, then that property must not be paid to or distributed among the Members.
2. 134 Instead, this property must be given or transferred to some other institution or institutions that have:
 3. 134.1 objects similar to the objects of the Company, and to which income tax deductible gifts can be made; and
 4. 134.2 a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 14 of this Constitution.
5. 135 Choosing which institution or institutions the Company will transfer this property to must be done by:
 6. 135.1 a Special Resolution of the Members at or before the time of the Company's dissolution; or
 7. 135.2 if no such Special Resolution is passed, then by a Judge or Registrar of the Supreme Court or such other court of competent jurisdiction.

a. T Dispute Resolution

1. 136 Unless otherwise provided in this Constitution, the dispute resolution procedure in this clause applies to disputes under this Constitution between a Member or Director and:
 2. 136.1 one or more Members;
 3. 136.2 one or more Directors; or
 4. 136.3 the Company.
5. 137 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under this clause until the disciplinary procedure is completed.
6. 138 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
7. 139 If those involved in the dispute do not resolve it under clause 138, they must within 10 days:
 8. 139.1 tell the Directors about the dispute in writing;
 9. 139.2 agree or request that a mediator be appointed; and

10. 139.3 attempt in good faith to settle the dispute by mediation.
11. 140 The mediator must be chosen by agreement of those involved, or where no agreement can be made, a person chosen by the Law Institute of Victoria.

a. U Replaceable Rules displaced

1. 141 Each of the provisions of the Act that would, but for this clause, apply to the Company as a replaceable rule is expressly displaced and does not apply to the Company.

a. V Definitions and Interpretation

1. 142 In this Constitution:

Act means the *Corporations Act 2001* (Commonwealth).

Annual General Meeting means the annual general meeting of Members.

Applicant means a person who lodges an Application under this Constitution.

Application means an application for Membership.

Auditor means the auditor or auditors of the Company, if the Company is required to have one. If the Company is not required to have an auditor, but has one, then it includes any such auditor.

Board means the board of directors of the Company.

Business Day means Monday to Friday excluding public holidays in the State or Territory the Company is registered in.

Chair means the Director who is elected to this office in accordance with clause 91.

Company means McKenzie Institute Australia Limited.

Constitution means this Constitution, as amended.

Deputy Chair means the Director who is elected to this office in accordance with clause 91.

Directors means the members individually or collectively of the Board.

Extraordinary Meeting means a General Meeting of Members other than an Annual General Meeting.

Financial Year means the period of time commencing on the date of incorporation of the Company and ending on 31 December, and each period of 12 months after the expiration of the previous financial year of the Company, commencing on 1 January and ending on the following 31 December.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Company.

Member means a person admitted to Membership in accordance with this Constitution.

Membership means membership of the Company.

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of the Company.

Secretary means the Director who is elected to this office in accordance with clause 91.

Special Resolution means a resolution that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

Treasurer means the Director who is elected to this office in accordance with clause 91.

1. 143 In this Constitution, unless the context requires otherwise:
 2. 143.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
 3. 143.2 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 4. 143.3 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
 5. 143.4 a word or phrase that is defined has the corresponding meaning in its other grammatical forms
 6. 143.5 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 7. 143.6 the singular includes the plural and vice versa;
 8. 143.7 a gender includes all other genders; and
 9. 143.8 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

Schedule 1

Names and usual residential addresses of initial directors

| Name of director | Usual residential address of director |
|----------------------|---|
| Peter Schoch | 27 Wilkinson Crt, Ocean Grove, VIC 3226 |
| Pearce Vander Meeden | 8 Angophora Place, Pennant Hills, NSW 2120 |
| Mark Cheel | 57 Clarence St, Geelong West, VIC 3218 |
| Valerie Mullane | 12 Blackwall Point Road Abbotsford NSW 2046 |

Guarantee

The Members of the Company have each guaranteed the following amount on its establishment \$10.